

MO/E  
4:05-CV-788 CDP

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

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2007-1189

JUL 3 2 2007

LEGGETT & PLATT, INCORPORATED and  
L&P PROPERTY MANAGEMENT COMPANY,

U.S. DISTRICT COURT  
EASTERN DISTRICT OF MO.  
ST. LOUIS

Plaintiffs-Appellants,

v.

VUTEK, INC.,

Defendant-Appellee.

### ON MOTION

Before MAYER, SCHALL, and LINN, Circuit Judge.

LINN, Circuit Judge.

### ORDER

VUTEk, Inc. moves to dismiss this appeal for lack of a final judgment. Leggett & Platt, Incorporated et al. (L&P) oppose. VUTEk replies.

L&P sued VUTEk for infringement of its patent. VUTEk counterclaimed for declaratory judgments of noninfringement and invalidity. The parties moved for summary judgment concerning infringement and invalidity. The district court granted the motion for summary judgment of invalidity of the asserted claims. The district court did not decide the motions regarding infringement but stated that "I would have denied them if that had been necessary, because factual issues remained on the question of infringement." The district court entered a judgment "that defendant VUTEk shall have judgment on plaintiffs' complaint and on its counterclaim, and plaintiffs' complaint is

dismissed in its entirety. Claims 1, 2, 3, 7, 9, 10, and 19 of U.S. Patent 6,755,518 are invalid."

After L&P filed its appeal from that judgment, it asked the district court to certify pursuant to Fed. R. Civ. P. 54(b) the district court's disposition of the complaint and/or VUTEk's counterclaim for a declaratory judgment of invalidity, because it appeared that VUTEk's counterclaim for a declaratory judgment of noninfringement remained pending. The judge denied the motion for a Rule 54(b) judgment, stating that she had ruled on all claims and that any infringement issues "became moot."

VUTEk argues that the district court's judgment did not, one way or the other, decide its counterclaim for a declaratory judgment of noninfringement. We agree. If the district court decided not to address infringement, then it necessarily denied VUTEk's counterclaim for a declaratory judgment of noninfringement, a determination that VUTEk might have chosen to appeal. The final judgment does not state such a disposition, but instead states that it granted judgment to VUTEk "on its counterclaim." Apparently, the district court granted relief on the counterclaim seeking a declaratory judgment of invalidity but stated no disposition of the other counterclaim.

We make no determination whether the district court should deny VUTEk's counterclaim for noninfringement as moot or decide it. In any event, until it has been disposed of, absent a Fed. R. Civ. P. 54(b) judgment, there is no final judgment on all claims for relief and we must dismiss this appeal.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion to dismiss is granted.

(2) All other pending motions are moot.

**JUN 27 2007**

\_\_\_\_\_  
Date

FOR THE COURT



\_\_\_\_\_  
Richard Linn  
Circuit Judge

**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

**JUN 27 2007**

**JAN HORBALY**  
**CLERK**

cc: David A. Roodman, Esq.  
Russell Burke Hill, Esq.

s8

**JUN 27 2007**

ISSUED AS A MANDATE: \_\_\_\_\_

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**I HEREBY CERTIFY THIS DOCUMENT**  
**IS A TRUE AND CORRECT COPY**  
**OF THE ORIGINAL ON FILE.**

**UNITED STATES COURT OF APPEALS**  
**FOR THE FEDERAL CIRCUIT**

By: G. M. Imbrunio Date: 6-27-07

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